1949.

File No. O. Prevn. of Adulteration 1/49

Legal Deptt.

A **BRANCH**

Subject:— Opinions under Bombay Prevention of Adulteration Act

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File No. 424-A

Gen. 194 e.

C O N T E N T S.

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Office of the R.L.A.

Whether the Railway Grain Shops are required to obtain licence from the local authority for sale of ghee, oil ect.

Bombay Prevention of Adulteration Act, 1925.

It is presumed that the Railway Grain Shops are owned by the Central Government. If so, they would not be governed by the Bombay Prevention of Adulteration Act, 1925 firstly because the Crown is not expressly mentioned in the Act and secondly because the Crown cannot be considered as impliedly named in the Act as the provisions of sectio 17-A prescribing penalty and of rule 11(iiA) prescribing fees for the licence would otherwise affect the prerogatives of the Crown.

Sd/- (P.M.L)
R.L.A

U.R.to H.& L.G.D., No. 3193 , dated the 24th March 1949.

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The facts & are that a prosecution has b en launched by the Kurla Municipality against one Mr. Allibhoy Hassan of Kurla for running an oil ghani without obtaining a licence on payment of the prescribed fee of Rs. 50, as required by the Bombay Prevention of Adulteration Act, 1925. The accused refused to pay the prescribed fees on the ground that the said fees were high. On his behalf his advocate reposes to pay Re. 1 as fees in accordance with the draft Food Rules under the Bombay Prevention of Adulteration Act, 1925. It appears that the Kurla Municipality proposes to adopt these rules, and in that connection correspondence is being carried on. The question referred to the R.L.A. is whether the draft Food Rules (which are yet to come into force) can be given retrospective effect so as to enable the accused to obtain benefit thereunder ^ The view that taken by the H. & L. G.D. is correct. The proposed Food Rules cannot be given retrospective effect, and the accused has to pay the fees, which were in force at the time the offence was committed. ^ It is not in dispute that at the time the accused committed the offence the licence fees were Rs. 50/-.

^ A correction

sd/- (illegible)

U.R. to the L.G. D.No. 9327 at 19-8-49.

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has served notices demanding arrears of licence fees for the years 1946-47 and 1947-48. The Union requests that retrospective ef ect should be given to the notification from 1946 onwards.

The Dy. Secy. H.& L.G.D. has now raised for consideration the question whether it is legally feasible to give retrospective effect to H.& L.G.D.Notification No. 2959/33 dt. 6.11.48

3 In the case of Stewart V Brojendra Kishor Roy Chaudhari L.F.C J. 112 Calcutta High Court held that unless the parent Act itself c early authorizes the issue of a notification with retrospective effect it must be presumed that such a notification is forbidden.

The Bombay Prevention of Adulteration Act '25 does not authorize the issue of notifications with retrospective effect. H.& L.G.D. Notification No. 2959 dt. 6.11.48 reducing the licence fee from Rs. 50/- to re. 1/- must be considered to take effect from the date of the notification i.e. 6.11.48.

It would be ultravires had Govt. given retrospective effect to this notification. In the circumstances, if Govt. considers giving retrospecitive ef ect to this amendment by a notification it will be equally ultravires even if previous publication for objections and suggestions is undertaken. The view expressed in the H.& L.G.D. note is correct.

Under sub-rule (ii-A) (a) (kk (ii) of rule 11 of the Bhusaval Prevention of Adulteration of Articles of Food Rules, framed by Government under Sections 19 and 19A of the Bombay Prevention of Adulteration Act, 1925, the fee prescribed for licences issued in form (v) of (vi) of

P.185 of H.& L. G. Dept. File 2959/33.

Appx. C was Rs. 50/-. The owners of oil "Gha requested the Municipality to reduce the said fees. The Bhusaval Municipality decided to amend rule 11 with a view to prescribing the licence fee at Re. 1/- per annum for wooden "ghani" worked by bullock and recommended to Government that the amendment be brought into effect retrospectively from 1-4-1946. The Director of public Health, howver, held that it was not possible to give retrospective effect to the proposed amendment and he recommended that the amendment should be given effect from the date of issue of Government orders. This view was accepted by Government, and no retrospective effect was given to rule 11 as amended.

Vide P.249 Dp.

pp.259-260 Do.

The question raised by the Deputy Secretary, H.& L.G. Deptt. is whether the proposal of the Bhusaval Municipality to give retrospective effect to the amendment of rule 11 from 1-4-1946 was impracticable.

Vide pp. 261 & 277 Do.

The questions which really arise for R.L.A.'s consideration are:-

p. 21 ante.

(i) whether having regard to the provisions of sections 19 and 19A of the Prevention of Adulteration Act, 1925 Government can legally amend with retrospective effect the rules prescribing licence fees for oil ghanis;

(2) If so, whether the Municipality can legally recover the arrears of licence fees.

Question(1);- Section 17 A of the Bombay Prevention of Adulteration Act, 1925, provides th no place shall be used for the manufacture or preparation for the purpose of trade or carry on the wholesale business of sale or purchase or supply of butter, ghee, margarine, or any oth fatty or oily substance in ended for as a food or as an ingredient of food without a licence grante by the local authority concerned subject to such

Office of the R.L.A.

The view taken by H.& L.G.D. at 'A' on p. 21 ante is correct. No discrimination in respect of certain individuals by publishing for objections can be made. Besides this question does not arise when the amendment itself could not be made retrospectively. The view taken by Dy. Secy. H.& L.G.D. is not correct.

O.C.

Sd/- (P.M.L).

Remembrancer of Legal Affairs.

U.R. to H.& L.G.D., No. 10454, dated the

15th September 1949.

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Office of the R.L.A.

The Bombay Prevention of Adulteration Act, 1925. Section 3.

Adulteration or causing of Adulteration of saccharine with coffee by a restaurant keeper would be an offence under section 3 of the Bombay Prevention of Adulteration Act, 1925. But if the customer himself mixes saccharine with a coffee served by the restaurant keeper separately, the latter would not be deemed to have adulterated and consequently there would be no offence under section 3.

Sd/. (R.L.E.)
U.R.to H. & L.G.D., No. 14388, dated the 12th December 1949.

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